In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 539

MARIO JOSEPH PACMAN, PETITIONER

v.

CHARLES B. MEAD, SUPERINTENDENT OF THE FEDERAL PRISON CAMP, CORONADO NATIONAL FOREST, PIMA COUNTY, ARIZONA [1]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM SUGGESTING THAT THE ABOVE-ENTITLED CAUSE HAS BECOME MOOT

The Solicitor General, on behalf of the above-named respondent, respectfully suggests to the Court that the above-entitled cause has become moot, and that the petition for a writ of certiorari

[1] The petition for a writ of certiorari is captioned "Mario Joseph Pacman, Appellant *vs.* United States of America, Appellee." The record filed with the petition bears the above caption, which is the correct one. The proceeding arose upon a petition for a writ of habeas corpus whereby petitioner sought his release from the custody of the above-named respondent (R. 1–37).

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should therefore be denied. The petition itself states (p. 3) that petitioner has "served the confinement meted out to him, and [is] under conditional release * * *." The Bureau of Prisons confirms that petitioner has served the minimum term imposed under the sentence here sought to be challenged [2] and that, pursuant to the provisions of 18 U. S. C. 710, 713, and 716b, he was released from actual custody on June 2, 1946, subsequent to the decision of the circuit court of appeals (R. 88–89). While, by virtue of the provisions of 18 U. S. C. 716b, petitioner remains on parole until the expiration of the full term of his sentence, which, according to the Bureau of Prisons will occur on December 25, 1946, he is, however, under no physical or bodily restraint from which he could be released by a writ of habeas

[2] Petitioner was sentenced to imprisonment for two years upon his conviction in the District Court for the Southern District of California of failing to report for induction into the armed forces, in violation of the Selective Training and Service Act of 1940 (R. 38–39). The conviction was affirmed by the Circuit Court of Appeals for the Ninth Circuit, 144 F. 2d 562, and this Court denied certiorari, 323 U. S. 786, No. 644, O. T. 1944. In the present case, petitioner seeks to renew the contentions he made in the earlier petition for certiorari, including the contention that his conviction was invalid because he was denied the opportunity of showing that his selective service classification was erroneous. He now relies upon the decision of this Court in *Estep* v. *United States*, 327 U. S. 114 (see Pet. 9–10). However, the rule of the *Estep* case does not apply to one who, like petitioner, failed to report for induction.

corpus. See *Baker* v. *Hunter,* 323 U. S. 740;[1] *Zimmerman* v. *Walker,* 319 U. S. 744; *Tornello* v. *Hudspeth,* 318 U. S. 792; *Ex parte Weil,* 317 U. S. 597; *Weber* v. *Squier,* 315 U. S. 810; *McNally* v. *Hill,* 293 U. S. 131, 139; *Stallings* v. *Splain,* 253 U. S 339, 343; *Wales* v. *Whitney,* 114 U. S. 564.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

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[1] While the *per curiam* decision in the *Baker* case, No. 151, O. T. 1944, merely states that the petition for a writ of certiorari was denied on the ground that the cause was moot, the memoranda filed by the Government show that, as in the instant case, the petitioner had been conditionally released.

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